STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL A. DYER,

Plaintiff-Appellant,

v

NATIONAL UNION FIRE INSURANCE COMPANY,

Defendant-Appellee/
Cross-Appellant,

and

AUTO CLUB INSURANCE ASSOCIATION,

Defendant-Appellee/
Cross-Appellee.

September 13, 1993

No. 140828
LC No. 91 404221 CK

Before: Doctoroff, C.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiff Michael Dyer appeals as of right from an order of the circuit court granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

The facts are undisputed. At the time of the incident in question, plaintiff was employed as a truck driver by Leaseway Corporation. Leaseway assigned plaintiff to drive a semi-tractor/trailer for Lear Siegler Seating Corporation. On the day plaintiff was injured, he was hauling seats from Lear's plant in Detroit to a General Motors plant in Pontiac. Plaintiff's only responsibility was to drive the truck back and forth between the Lear plant and the GM plant. Lear employees loaded the seats onto the truck and General Motors' employees unloaded them. After plaintiff backed the truck up to the GM loading dock, it was unloaded by GM employees. Plaintiff then pulled the truck forward a few feet because the doors to the truck could not be closed while the truck was backed up against the loading dock. Plaintiff walked to the rear of the trailer. As he attempted to swing the truck door shut, a gust of wind blew the door, wrenching plaintiff's arm and causing neurological damage to his elbow.

Plaintiff filed a workers' compensation claim. Allstate Insurance Company paid him $352 per week until February 1990, at which time plaintiff redeemed his claim for $30,000. Plaintiff then filed this action seeking no-fault benefits from Auto Club Insurance Association (ACIA), his own insurance company, or, in the alternative, National Union Fire Insurance Company (National), the truck owner's no-fault insurance company.

The trial court granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) based on a finding that plaintiff was completing the process of unloading the seats and, therefore, was precluded from recovery under MCL 500.3106(2); MSA 24.13106(2).

The issue presented on appeal is whether plaintiff's injury was sustained while unloading the vehicle. Plaintiff claims that where a driver of a truck simply closes the doors to his trailer, but takes no part in the loading or unloading process, he may recover no-fault benefits. Defendants claim that plaintiff's attempt to close the truck door was part of the unloading process and, therefore he is precluded from recovering no-fault benefits.

No-fault coverage is not available where workers' compensation benefits are payable to an employee who sustains injury in the course of his or her employment while loading, unloading, or doing mechanical work on a vehicle unless the injury arose from the use or operation of another vehicle. Raymond v Commercial Carriers, 173 Mich App 290, 292; 433 NW2d 342 (1988); MCL 500.3106, subds (1)(c) and (2); MSA 24.13106, subds (1)(c) and (2). In examining the legislative intent of this statute, this Court has indicated that it is appropriate to broadly interpret the terms "loading" and "unloading" to effectuate the Legislature's intent to eliminate duplication of benefits for work-related injuries except where the actual driving or operation of a motor vehicle is involved. Raymond, supra at 292-293; Bell v F J Boutell Driveaway Co, 141 Mich App 802; 369 NW2d 231 (1985). In Gibbs v United Parcel Service, 155 Mich App 300; 400 NW2d 313 (1986), the terms "loading" and "unloading" a parked vehicle were deemed to include acts incidental to the completion of the loading or unloading process for purposes of §3016(2). See also Crawford v Allstate Insurance Co, 160 Mich App 182, 187; 407 NW2d 618 (1987).

Here, plaintiff in attempting to close the doors to his truck, was performing an act incidental to the unloading process. After the seats were unloaded by GM employees, plaintiff had to close the truck doors in order to return to Lear's plant. We conclude that, in interpreting the term "unloading" broadly, unloading includes the act of closing the truck doors after the seats had been removed. The act of closing the door was the completion of the unloading process. Therefore, the trial court properly found that §3106(2) of the no-fault statute precluded plaintiff from receiving benefits for the injury he suffered in this matter.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael J. Kelly
/s/ Roman S. Gribbs